

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 16-10671

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ASHFORD HOSPITALITY PRIME, INCORPORATED,

Plaintiff - Appellee

v.

SESSA CAPITAL (MASTER), L.P.,

Defendant-Third Party Plaintiff - Appellant

SESSA CAPITAL GP, L.L.C.; SESSA CAPITAL IM, L.P.; SESSA CAPITAL  
IM GP, L.L.C.; JOHN E. PETRY; PHILIP B. LIVINGSTON; LAWRENCE A.  
CUNNINGHAM; DANIEL B. SILVERS; CHRIS D. WHEELER,

Defendants - Appellants

v.

DOUGLAS A. KESSLER; ANDREW STRONG; STEFANI D. CARTER;  
CURTIS B. MCWILLIAMS; MONTY J. BENNETT; ASHFORD  
HOSPITALITY ADVISORS, L.L.C.; ASHFORD, INCORPORATED;  
MATTHEW D. RINALDI; W. MICHAEL MURPHY,

Third Party Defendants - Appellees

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Consolidated w/16-10672

ASHFORD HOSPITALITY PRIME, INCORPORATED,

Plaintiff - Appellee

v.

SESSA CAPITAL (MASTER), L.P.; SESSA CAPITAL GP, L.L.C.; SESSA CAPITAL IM, L.P.; SESSA CAPITAL IM GP, L.L.C.; JOHN E. PETRY; PHILIP B. LIVINGSTON; LAWRENCE A. CUNNINGHAM; DANIEL B. SILVERS; CHRIS D. WHEELER,

Defendants - Appellants

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Appeals from the United States District Court for the  
Northern District of Texas, Dallas

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O R D E R:

IT IS ORDERED that the appellants' motion to supplement the record of appeal with recently filed motions for contempt and a supporting appendix in the District Court is GRANTED.

/s/ Lyle W. Cayce  
LYLE W. CAYCE  
CLERK OF COURT

ENTERED AT THE DIRECTION OF THE COURT

**Case No. 16-10671**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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ASHFORD HOSPITALITY PRIME, INCORPORATED,

Plaintiff – Appellee

v.

SESSA CAPITAL (MASTER), L.P.,

Defendant–Third Party Plaintiff – Appellant

SESSA CAPITAL GP, L.L.C.; SESSA CAPITAL IM, L.P.; SESSA CAPITAL IM  
GP, L.L.C.; JOHN E. PETRY; PHILIP B. LIVINGSTON; LAWRENCE A.  
CUNNINGHAM; DANIEL B. SILVERS; CHRIS D. WHEELER,

Defendants – Appellants

v.

DOUGLAS A. KESSLER; ANDREW STRONG; STEFANI D. CARTER; CURTIS  
B. MCWILLIAMS; MONTY J. BENNETT; ASHFORD HOSPITALITY  
ADVISORS, L.L.C.; ASHFORD, INCORPORATED; MATTHEW  
D. RINALDI; W. MICHAEL MURPHY,

Third Party Defendants – Appellees

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**Consolidated w/16-10672**

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ASHFORD HOSPITALITY PRIME, INCORPORATED,

Plaintiff – Appellee

v.

SESSA CAPITAL (MASTER), L.P.; SESSA CAPITAL GP, L.L.C.; SESSA  
CAPITAL IM, L.P.; SESSA CAPITAL IM GP, L.L.C.; JOHN E. PETRY; PHILIP B.  
LIVINGSTON; LAWRENCE A. CUNNINGHAM;  
DANIEL B. SILVERS; CHRIS D. WHEELER,

Defendants – Appellants

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On Appeal from the United States District Court  
For The Northern District of Texas, Dallas Division  
Civ. Nos. 3:16-cv-00527-N and 3:16-cv-00713

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**APPELLANTS' MOTION TO SUPPLEMENT THE RECORD ON  
APPEAL OR TO TAKE JUDICIAL NOTICE OF FACTS  
DEMONSTRATING NON-MOOTNESS OF APPEAL**

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*Attorneys for Appellants*

Nos. 16-10671 and 16-10672

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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*ASHFORD HOSPITALITY PRIME, INC. V. SESSA CAPITAL (MASTER), L.P.*

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**CERTIFICATE OF INTERESTED PERSONS**

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The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

1. Sessa Capital (Master), L.P. (“Sessa”), Defendant-Appellant, Counterclaimant and Third-Party Claimant, is a Cayman Islands exempted limited partnership that is not publicly traded;
2. Sessa Capital GP, LLC, Defendant-Appellant, is a Delaware limited liability company that is not publicly traded;
3. Sessa Capital IM, L.P., Defendant-Appellant, is a Delaware limited partnership that is not publicly traded;
4. Sessa Capital IM GP, LLC, Defendant-Appellant, is a Delaware limited liability company that is not publicly traded;
5. John E. Petry, Defendant-Appellant, is the founder and manager of the Sessa entities and one of the persons nominated by Sessa as a candidate for election to

the board of Ashford Hospitality Prime Inc. (“Ashford Prime”);

6. Philip B. Livingston, Defendant-Appellant, is one of the persons nominated by Sessa as a candidate for election to the board of Ashford Prime;

7. Lawrence A. Cunningham, Defendant-Appellant, is one of the persons nominated by Sessa as a candidate for election to the board of Ashford Prime;

8. Daniel B. Silvers, Defendant-Appellant, is one of the persons nominated by Sessa as a candidate for election to the board of Ashford Prime;

9. Chris D. Wheeler, Defendant-Appellant, is one of the persons nominated by Sessa as a candidate for election to the board of Ashford Hospitality Prime Inc.;

10. Ashford Hospitality Prime, Inc., Plaintiff-Counterclaim-Defendant-Appellee, is a publicly traded Maryland corporation. There are no publicly held corporations that own ten percent or more of Ashford Prime;

11. Ashford Inc., Third-Party Defendant-Appellee, is a publicly-traded Delaware corporation. There are no publicly held corporations that own ten percent or more of Ashford Inc.;

12. Ashford Hospitality Advisors LLC, Third-Party Defendant-Appellee, is a Delaware limited liability company and a subsidiary of and the operating company of Ashford Inc.;

13. Monty J. Bennett, Third-Party Defendant-Appellee, is the CEO and Chairman of the Board of Directors of Ashford Hospitality Prime;

14. Douglas A. Kessler, Third-Party Defendant-Appellee, is a member of the Board of Directors of Ashford Prime;

15. Stefani D. Carter, Third-Party Defendant-Appellee, is a member of the Board of Directors of Ashford Prime;

16. Curtis B. McWilliams, Third-Party Defendant-Appellee, is a member of the Board of Directors of Ashford Prime;

17. W. Michael Murphy, Third-Party Defendant-Appellee, is a member of the Board of Directors of Ashford Prime;

18. Matthew D. Rinaldi, Third-Party Defendant-Appellee, is a member of the Board of Directors of Ashford Prime; and

19. Andrew Strong, Third-Party Defendant-Appellee, is a member of the Board of Directors of Ashford Prime.

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s/ Glen E. Summers  
Glen E. Summers  
*Attorney of Record for Appellants*

Appellants respectfully move to supplement the record on appeal to include two identical motions for contempt, and a supporting appendix, filed in the district court on June 28, 2016 by Appellee Ashford Hospitality Prime, Inc. (“Ashford Prime” or the “Company”). *See* Case No. 16-cv-00527-N, ECF No. 116; Case No. 16-cv-00713-N, ECF No. 88 (the “Contempt Motion”).

This Court has the authority pursuant to Federal Rule of Appellate Procedure 10(e)(c) to correct or modify the record on appeal. As explained in Appellants’ Opposition to Appellees’ Motion to Dismiss Appeal as Moot, the pendency of the Contempt Motion in the district court gives rise to a continuing need to adjudicate the validity of the district court’s preliminary injunction decision. *See Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, 335 F.3d 357, 366 & n.34 (5th Cir. 2003).

Alternatively, this Court may take judicial notice of these materials. *See* Fed. R. Evid. 201(b)(2); *ITT Rayonier Inc. v. United States*, 651 F.2d 343, 345 n.2 (5th Cir. 1981) (court of appeals may take judicial notice of the records of inferior courts relevant to mootness issue).

Date: July 5, 2016

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Respectfully submitted,

s/ Glen E. Summers

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*Attorneys for Appellants*

### CERTIFICATE OF COMPLIANCE

The undersigned certifies that on July 5, 2016, this motion was transmitted to the Clerk of the United States Court of Appeals for the Fifth Circuit via the Court's CM/ECF document filing system and that this motion complies with the requirements of 5th Cir. R. 27.4, Fed. R. App. P. 27(d), Fed. R. App. P. 32(a), and 5th Cir. R. 32. This motion has been prepared in Garamond, a proportionally spaced typeface using Microsoft Word 2013 in font size 14.

The undersigned further certifies that (1) any required privacy redactions have been made pursuant to 5th Cir. R. 25.2.13; and (2) this document has been scanned for viruses with the most recent version of GFI Cloud Antivirus and is free of viruses.

s/ Glen E. Summers

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*Attorneys for Appellants*

### **CERTIFICATE OF SERVICE**

I certify that on July 5, 2016, the foregoing Motion was filed electronically using the Court's CM/ECF system, which will give notice of the filing to counsel. In addition, an electronic copy of the Brief was served upon counsel for the Appellees listed below by electronic mail:

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s/ Glen E. Summers  
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*Attorneys for Appellants*

***United States Court of Appeals***

FIFTH CIRCUIT  
OFFICE OF THE CLERK

LYLE W. CAYCE  
CLERK

TEL. 504-310-7700  
600 S. MAESTRI PLACE  
NEW ORLEANS, LA 70130

July 11, 2016

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 16-10671 cons/w 16-10672  
Ashford Hospitality Prime, Inc, et al v. Sessa  
Capital (Master), L.P., et al  
USDC No. 3:16-CV-527&USDC No. 3:16-CV-713

The court has granted appellants motion to supplement the record with with recently filed Motions for Contempt for Violation of Preliminary Injunction. The district court is requested to provide us with a supplemental electronic record consisting of the documents outlined in the attached motion. Counsel is reminded that any citations to these documents must cite to the supplemental electronic record.

Sincerely,

LYLE W. CAYCE, Clerk



By: \_\_\_\_\_  
Nancy F. Dolly, Deputy Clerk  
504-310-7683

Mr. Sundeeep Kumar Addy  
Mr. Thomas F. Allen Jr.  
Mr. James C. Bookhout  
Mr. Nathan Bull  
Mr. John David Byars  
Mr. Joseph Doman  
Mr. Bradley Wayne Foster  
Mr. Jonathan Morind Hoff  
Ms. Karen S. Mitchell  
Mr. Matthew Griffith Nielsen  
Mr. Martin L. Seidel  
Mr. Evan P. Singer  
Mr. Paul Joseph Skiermont  
Mr. Jared Stanisci  
Mr. Glen E. Summers

P.S. **To The District Court:** The above case is scheduled for oral argument on Tuesday, August 2, 2016, therefore the Supplemental Electronic record is due Friday, July 15, 2016.